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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re L.L., a Person Coming Under the
Juvenile Court Law.

B214599
(Los Angeles County
Super. Ct. No. MJ14339)

THE PEOPLE,

Plaintiff and Respondent,

v.

L.L.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County.

Robin Kessler, Temporary Judge. (Pursuant to Cal. Const. Art. VI, § 21.) Vacated and remanded.

Mary Bernstein, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Paul M. Roadarmel and Eric J. Kohm, Deputy Attorneys General, for Plaintiff and Respondent.

L.L. (appellant) appeals from the order committing him to the Division of Juvenile Facilities (DJF). According to appellant, under the plain language of Welfare and Institutions Code sections 731, subdivision (a)(4) and 733, subdivision (c), he is ineligible for commitment to DJF. The People agree with appellant. We agree, as well, and vacate the DJF commitment order and remand the matter for proper disposition.

BACKGROUND

In August 2006, appellant admitted that he committed assault with a deadly weapon (Pen. Code, §245, subd. (a)(1))¹ on or about April 5, 2006, and second degree commercial burglary (§ 459) on or about July 17, 2006. The juvenile court declared appellant a ward of the court under Welfare and Institutions Code section 602, placed him home on probation, and set the maximum confinement period at five years eight months.

In November 2006, appellant admitted that he committed second degree robbery (§ 211) on or about October 14, 2006. The juvenile court ordered appellant to remain on home probation and set the maximum confinement period at six years eight months.

In December 2006, appellant admitted that he committed second degree robbery (§ 211) on or about September 23, 2006. The juvenile court ordered three months of short-term camp community placement and set the maximum confinement period at seven years eight months.

On October 22, 2007, the Los Angeles County District Attorney (District Attorney) alleged in a Welfare and Institutions Code section 602 petition that, on or about August 20, 2007, appellant: threatened a witness (count 1; § 140, subd. (a)), and committed simple battery (count 2; §§ 242, 243, subd. (a)).

On November 26, 2007, the District Attorney alleged in a Welfare and Institutions Code section 602 petition that, on or between August 1, 2005, and June 1, 2006,

¹ All subsequent references are to the Penal Code unless otherwise indicated.

appellant: committed lewd acts upon a child (counts 1, 2 & 3; § 288, subd. (a)), committed oral copulation by threat of future retaliation (count 4; § 288a, subd. (d)(2)), sodomized a person under 14 years of age (count 5; § 286, subd. (c)(1)), and dissuaded a witness from reporting a crime (count 6; § 136.1, subd. (b)(1)).

On December 21, 2007, appellant admitted count 1 (threatening a witness) of the October 22 petition, and counts 1 and 2 (committing lewd acts upon a child) of the November 26 petition. The juvenile court dismissed the remaining counts on both petitions. The juvenile court ordered nine months of long-term camp community placement and set the maximum term of physical confinement at 14 years eight months.

On November 24, 2008, appellant admitted to breaking into a camp facility refrigerator and removing snacks and cookies. Based on this admission, the juvenile court sustained a Welfare and Institutions Code section 777 petition.²

On December 9, 2008, the juvenile court committed appellant to DJF and set the maximum term of physical confinement at 14 years eight months. At the hearing, the juvenile court noted that camp community placement had been “unsuccessful” and that commitment to DJF served the dual goals of protecting the public and providing appellant access to rehabilitative services. Appellant appealed from the juvenile court’s order.

ANALYSIS

Where, as here, “a minor is adjudged a ward of the court on the ground that he or she is a person described by Section 602, the court may . . . [c]ommit the ward to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, if the ward has committed an offense described in subdivision (b) of Section 707 and is not otherwise

² Welfare and Institutions Code section 777 provides authority for a probation officer to seek an order changing or modifying a previous placement order if a violation of a condition of probation occurs.

ineligible for commitment to the division under Section 733.” (Welf. & Inst. Code, § 731, subd. (a)(4).)

Welfare and Institutions Code section 733 sets forth three categories of juvenile wards who are ineligible for commitment to DJF. As relevant here, the statute provides: “A ward of the juvenile court who meets any condition described below shall not be committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities: [¶] . . . [¶] (c) The ward has been or is adjudged a ward of the court pursuant to Section 602, and the *most recent offense alleged in any petition* and admitted or found to be true by the court is not described in subdivision (b) of Section 707, unless the offense is a sex offense set forth in subdivision (c) of Section 290.008 of the Penal Code.” (Welf. & Inst. Code, § 733, subd. (c), italics added.)³

“The language of section 733(c) allows commitment to DJF only when ‘*the most recent offense* alleged in any petition and admitted or found to be true by the court’ (italics added) is an eligible offense. The statute does not focus on the overall or entire delinquent history of the minor or on whether the minor may be generally considered a serious, violent offender. The language looks to the minor’s ‘most recent offense.’” (*V.C. v. Superior Court* (2009) 173 Cal.App.4th 1455, 1468.) “The Legislature has specifically determined it is the minor’s most recent offense that determines the minor’s eligibility for DJF commitment.” (*Ibid.*)

Here, the most recent offense alleged in any petition, and admitted, is the offense of threatening a witness (§ 140, subd. (a)), which occurred on or about August 20, 2007. The offense of threatening a witness is *not* described in Welfare and Institutions Code section 707, subdivision (b), and is *not* a sex offense as set forth in section 290.008, subdivision (c). While appellant has admitted to the offenses of robbery and lewd acts

³ The other two categories of juvenile wards who are ineligible for commitment to DJF are wards under 11 years of age and wards who suffer from any contagious, infectious, or other disease that would probably endanger the lives or health of others in the facility. (Welf. & Inst. Code, § 733, subds. (a)-(b).)

upon a child, offenses that are described under Welfare and Institutions Code section 707, subdivision (b), and section 290.008, subdivision (c), he committed these offenses on or about September 23, 2006, and on or between August 1, 2005, and June 1, 2006, respectively. He admitted to committing the offense of threatening a witness on or about August 20, 2007, and therefore, that was the most recent offense. Accordingly, under the plain language of Welfare and Institutions Code sections 731, subdivision (a)(4) and 733, subdivision (c), appellant was ineligible for commitment to DJF. The People do not contend otherwise.

DISPOSITION

The December 9, 2008, order committing appellant to DJF is hereby vacated. We remand the matter for proper disposition.

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_____, P. J.

BOREN

We concur:

_____, J.

ASHMANN-GERST

_____, J.

CHAVEZ